IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08-11-2006

CORAM

THE HONOURABLE MR. JUSTICE V. RAMASUBRAMANIAN

WRIT PETITION No.12577 of 2006
And
W.P.M.P.No.14160 of 2006

Pandurangan .. Petitioner

Vs.

1.The Sub Registrar,
Reddiarpalayam,
Pondicherry.

2.The District Registrar,
Pondicherry.

3.The District Collector,
Pondicherry. .. Respondents

Writ petition filed under Article 226 of Constitution of India praying for issue of a Writ of Certiorarified Mandamus, calling for the records relating to the Order No.1004-B2-G-Rev.2005(N) dated 14.11.2005 passed by the third respondent and quash the same and direct the first respondent to register the sale deed in respect of immovable property admeasuring an extent of 83,200 sq. ft. in R.S.No.118/1, in Village No.39, Pethuchettipatti, Karuvadikuppam Revenue Village, in Oulgarpet Municipal limit, within the limits of Sub-Registrar's Office, Reddiarpalayam in Pondicherry.

For Petitioner : Mr.R.Muthukumarasamy,
Senior Counsel for
M/s.P.V.S.Giridhar
Associates.

For Respondents : Mr.T.Murugesan,
Senior Counsel and
Spl. Government Pleader for
Pondicherry for
Mr.K.K.Sasidharan,
Government Pleader
Pondicherry.

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ORDER

The petitioner, who claims to have entered into an agreement on 9.7.2004 for the purchase of an immovable property in R.S.No.118/1 in Pethuchettipatti Village, Karuvadikuppam Revenue Village, situate within the jurisdiction of the Sub Registrar of Reddiarpalayam, Union Territory of Pondicherry, has come up with the present writ petition, challenging a communication of the Collector-cum-Additional Secretary (Revenue) Pondicherry, dated 14.11.2005, by which the Collector has instructed the District Registrar of Pondicherry to instruct the concerned Sub Registrar to withhold the registration of any sale transaction in respect of the land at R.S.Nos.117 and 118 of the said Revenue Village.

2. In view of the fact that the scope of the dispute raised in the writ petition lies in a narrow campus, I have taken up the main writ petition itself for final disposal, with the consent of both the parties.

3. I have heard Mr.R.Muthukumarasamy, learned senior counsel appearing for the petitioner and Mr.T.Murugesan, learned senior counsel and Government Pleader appearing for the respondents.

4. It is the contention of the petitioner that he had entered into an agreement on 9.7.2004 with one Shankar for the purchase of a vacant land measuring an extent of about 83,200 sq. ft. in R.S.No.118/1 in the above Village. The said agreement of sale has also been registered as document No.3724 of 2004 in the Office of the Assistant Registrar of Reddiarpalayam. However, when the petitioner made enquiries in the Office of the first respondent in February, 2006 regarding the guideline value of the property, for the purpose of purchase of stamp papers, he came to know about the impugned communication issued by the third respondent dated 14.11.2005 instructing the second respondent to issue suitable instructions to the first respondent to withhold the registration of any sale transaction in respect of the lands in R.S.Nos.117 and 118 of the said Village. It is the contention of the petitioner that he had applied for a loan to the Indian Overseas Bank and that the Bank had formally agreed to sanction the loan and that in view of the impugned communication, he would not be able to get the sale deed registered, leading to the cancellation of the provisional sanction of the loan.

5. Mr.R.Muthukumarasamy, learned senior counsel appearing for the petitioner contended that the District Collector (third respondent herein) has no jurisdiction at all to prevent the first respondent from exercising his statutory functions and that therefore, the impugned communication is illegal. The learned senior counsel relied upon a Division Bench judgment of this Court in S.Arunachalam and Others vs. State of Tamil Nadu (1997 (1) CTC 129) as well as a Division Bench judgment of the Indore Bench of the Madhya Pradesh High Court in Kailash vs. Sub-Registrar of Assurances, Indore (AIR 1995 Madhya Pradesh 12).

6. The respondents 1 and 2, who represent the Registration Department, have filed a common counter-affidavit and the third respondent has independently filed a counter-affidavit to the writ petition.

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7. Inviting my attention to the contents of the said counter-affidavits, Mr.T.Murugesan, learned senior counsel and Government Pleader of Pondicherry, contended that at the outset, there was no cause of action for the petitioner to file the above writ petition, inasmuch as he had not presented any document for registration before the first respondent at any point of time. Learned senior counsel and Government Pleader of Pondicherry, also contended that the Sub Registrar would start exercising jurisdiction only after the presentation of a document to him for registration and that since the petitioner never presented any document for registration, the question of abdication of the statutory duties on the part of the first respondent did not arise. On facts, the learned senior counsel and Government Pleader of Pondicherry, appearing for the respondents submitted that a complaint was received from a person claiming to be the owner of the property in question, that patta had been fraudulently transferred in the name of some other person and that upon an enquiry conducted by the Department, it was found that there was tampering of records of the Taluk Office, which necessitated the third respondent to send the communication.

8. I have carefully considered the rival submissions of both the learned senior counsel.

9. There is no dispute about the fact that the third respondent, who is the District Collector and Additional Secretary (Revenue), issued the impugned communication dated 14.11.2005, which reads as follows:-

> "An enquiry was conducted by the Director of Survey with regard to issue of false chitta copy in favour of Tmt.Thaiyalnayagi in respect of property at R.S.No.117 and 118/1, of Kanavadikuppam Revenue Village vide Patta No.973 and reposted the chitta correction has been made by way of temper of records of the taluk office.
>
> The District Registrar of Pondicherry therefore instructed to give suitable instruction to the Sub-Registrar concerned to withheld Registration of any sale of transaction in respect of land at R.S.No.117 and 118 of Karavaikuppam of Revenue Village until further order."

10. What is challenged in the present writ petition is only the said communication issued by the third respondent to the second respondent, directing him to issue suitable instruction to the first respondent to withhold the registration of any sale transaction in respect of the land in question. Therefore, the first defence taken by the respondents that there was no cause of action for the petitioner to approach this Court, when he has not even presented a document for registration, cannot be countenanced. The cause of action for the petitioner to approach this Court is the impugned communication itself. As a member of the public, to whom the impugned communication has come to notice, the petitioner cannot be expected to type the sale deed of stamp papers, present it to the first respondent and then await the creation of a cause of action to approach the Court. Interestingly, the respondents 1 and 2, who represent the Registration Department and to whom the impugned

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communication has been sent by the third respondent, have not made a whisper about the fact or impact of the said communication on them. The third respondent has admitted to have sent the impugned communication, in his counter-affidavit and has explained the circumstances under which it was sent. Inasmuch as the respondents 1 and 2 have not taken a stand that they have ignored the impugned communication of the third respondent or that they are not bound by the impugned communication, the petitioner was justified in entertaining an apprehension that the impugned communication would adversely affect his interest. Therefore, the contention that there was no cause of action for the petitioner to approach the Court, cannot be accepted.

11. Coming to the facts and circumstances on which the third respondent was compelled to issue the impugned communication, it is seen that as the Head of the Revenue Department of the District, the first respondent may be entitled to keep a check on the entries made in the revenue records. If bogus entries have been made in chitta, it was open to the third respondent to initiate proceedings for the rectification of such entries, after following due process of law.

12. But the first respondent has no authority under The Registration Act, 1908, to issue any instructions either preventing the Registering Officer or regulating the manner in which the Registering Officer should exercise statutory functions. The Registrars and Sub Registrars are appointed by the State Government, by virtue of the provisions contained in Section 6 of the Registration Act, 1908 (hereinafter referred to as the 'Act'). The powers and duties of the Registrars and Sub Registrars are enumerated under Sections 34, 35, 36, 37, 38, 52, 55, 57, 58, 59, 60, 61, 63, 64, 65, 66, 68, 71, 72, 73, 74, 75, 76 and 83 of the Act. The scope of the power of the Registrar/Sub Registrar while examining a document presented for registration is spelt out under Sections 34 and 52 of the Act.

13. In particular, the scope of an enquiry to be conducted by the Registering Officer is circumscribed by Sub Section (3) of Section 34 which reads as follows:-

> "(3) The Registering Officer shall thereupon--
>
> (a) enquire whether or not such document was executed by the persons by whom it purports to have been executed;
>
> (b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document; and
>
> (c) in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear."

14. In simple terms, the enquiry to be made by the Registering Officer is (i) on the factum of execution of the document, (ii) the identity of the person who claims to have executed the document and (iii) the right of the person who appears as a representative, assignee or agent of the executant.

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15. If the Registering Officer is satisfied about the factum of execution and the identity of the person executing the document, he

becomes obliged to register the document, by virtue of the provisions of Section 35 (1) which reads as follows:-

> "35. Procedure on admission and denial of execution respectively.---(1)(a) If all the persons executing the document appear personally before the Registering Officer and are personally known to him, or if he be otherwise satisfied that they are the persons they represent themselves to be, and if they all admit the execution of the document, or
>
> (b) if in the case of any person appearing by a representative, assign or agent, such representative, assign or agent admits the execution, or
>
> (c) if the person executing the document is dead, and his representative or assign appears before the Registering Officer and admits the execution, the Registering Officer shall register the document as directed in Sections 58 to 61, inclusive."

16. The obligation of the Registering Officer to register a document presented to him for the purpose, after reaching a subjective satisfaction about the identity of the person and the factum of execution, is made explicitly clear in the last portion of Section 35(1), by the use of the words "the Registering Officer shall register the document".

17. A conjoint reading of Sections 34 and 35 of the Act shows that the scope of the enquiry to be made by the Registering Officer is limited by the Act, to the factum of execution and the identity of the person executing the document, other than the levy of stamp duty, collection of registration charges and the completion of procedural formalities such as attestation etc.

18. When the power of the Registering Officer himself is so circumscribed by the provisions of the Act, it is not open to the third respondent to issue an instruction to respondents 1 and 2 to withhold the registration of any transaction, as he has no Appellate, Supervisory or Revisional powers over the Registering Officer, under the Act.

19. In view of the above legal position, the learned senior counsel and Government Pleader of Pondicherry, fairly submitted that as and when a document is presented by the petitioner for registration, the first respondent will examine the same for its admissibility in accordance with the provisions of The Registration Act without reference to the impugned communication. But the learned senior counsel and Government Pleader of Pondicherry also brought to my notice that under the Pondicherry Registration Rules, the Registering Officer has the power to make an enquiry relating to the title, to some extent.

20. Under Rule 54 of the Pondicherry Registration Rules, 1969, providing for an enquiry to be made by the Registering Officer, an additional provision was incorporated by an amendment issued by the Inspector General of Registration, Pondicherry. The said amendment reads

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as follows:-

> "16. Amendment of rule 54.---In the said rule 54, after the words "any enquiry", the following shall be added, namely:-
>
> "The Registering Officer shall also enquire about the linkage of the executants with reference to the registered holder in the revenue records or court order, if any".

21. Therefore, according to the learned senior counsel and Government Pleader of Pondicherry, if a document is presented for registration by the petitioner, the Registering Officer would hold an enquiry as required by the amended Rule 54 also. But I am unable to accept the said stand taken by the learned senior counsel and Government Pleader of Pondicherry.

22. As seen from the aforesaid amendment, it was issued by the Inspector General of Registration, Pondicherry, though with the prior approval of the Government of Pondicherry, in exercise of the power conferred by Section 69 of the Act. Section 69 of the Act which confers the rule making power upon the Inspector General of Registration, reads as follows:-

> "69. Power of Inspector General to superintend registration offices and make rules.---(1) The Inspector General shall exercise a general superintendence over all the registration offices in the territories under the State Government, and shall have power from time to time to make rules consistent with this Act--
>
> (a) providing for the safe custody of books, papers and documents
>
> (aa) providing the manner in which and the safeguards subject to which the books may be kept in computer floppies or diskettes or in any other electronic form under sub-section (1) of section 16-A;
>
> (b) declaring what language shall be deemed to be commonly used in each district;
>
> (c) declaring what territorial divisions shall be recognised under section 21;
>
> (d) regulating the amount of fines imposed under sections 25 and 34, respectively;
>
> (e) regulating the exercise of the discretion reposed in the Registering Officer by section 63;
>
> (f) regulating the form in which Registering Officers are to make memoranda of documents;
>
> (g) regulating the authentication by Registrars and Sub-Registrars of the books kept in their respective offices under section 51;
>
> (gg) regulating the manner in which the instruments referred to in sub-section (2) of section 88 may be presented for registration;
>
> (h) declaring the particular to be contained in

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Indexes Nos.I,II,III and IV, respectively;

(i) declaring the holidays that shall be observed in the Registration Offices; and

(j) generally, regulating the proceedings of the Registrars and Sub-Registrars.

(2) The rules so made shall be submitted to the State Government for approval, and, after they have been approved, they shall be published in the Official Gazette, and on publication shall have effect as if enacted in this Act."

23. A reading of the above provision makes it clear that the Inspector General of Registration does not have power to enlarge the scope of the power conferred upon the Registering Officer by the Act. The aforesaid amendment to Rule 54 does not fall under any of the Clauses "(a), (aa), (b), (c), (d), (e), (f), (g), (h), (i) and (j)" of sub Section (1) of Section 69. Even if the said amendment to Rule 54 could be brought within the purview of Clause (j) of sub Section (1) of Section 69, by stretching it a little, the basic requirement underlined in sub Section (1) of Section 69 is that such rules should be "consistent with this Act".

24. Under such circumstances, the amended Rule 54 cannot in any way be taken as enlarging the power conferred upon the Registering Officer under Sections 34 and 35 of the Act and consequently, the first respondent cannot, under the guise of invoking Rule 54, arrogate to himself the powers of a Civil Court to decide the title of the parties to a document.

25. Applying the theory of "occupied field", the Division Bench of this Court in the decision reported in 1997 (1) CTC 129 set aside a Government Order, directing the Registration Department not to register the documents relating to sale of certain house-sites, in respect of which an opportunity for objecting is given to the Panchayats, Town Panchayats, Municipalities and Corporations.

26. In the decision in Kailash vs. Sub-Registrar of Assurances, Indore (AIR 1995 Madhya Pradesh 12) relied upon by the learned senior counsel appearing for the petitioner, the Division bench of the Madhya Pradesh High Court held that the Registering Officer is not bound by any instructions issued by the Collector to the Sub Registrar. In paragraph-16 of the said judgment, it was held as follows:-

"16. The appellate order in the case of Yeshwantsingh (M.P.No.59/84) makes a reference to certain executive instructions issued by the Collector, Indore in pursuance to which the Sub-Registrar had refused registration of the document. Firstly, no such instructions have been placed on record, even assuming them to be so, the Registration Act does not confer any such power on the Collector, of any district to issue any such instructions prohibiting the registration of documents. The respondent No.1 while purporting to act in the discharge of his statutory duties has to exclude such instructions, which have no foundation in law. We are,

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therefore, constrained to hold that the respondent No.1, while refusing to register the document on the basis of some instructions from the Additional Collector, was certainly not acting in accordance with law. There could be no executive instructions contrary to law nor can such instructions have any overriding effect on the statutory provisions of law. It is painful to note that in fact of this Court's direction the appellate order dated 25.2.1983 (in M.P.No.59/84) should seek justification for refusal to register the document on the basis of such direction from the Additional Collector."

27. It is well settled that Statutory Rules cannot override express provisions of the Statute and Executive Instructions cannot override either of the two.

28. Under such circumstances, the writ petition is allowed and the impugned communication of the third respondent is set aside and the first respondent is directed to examine any document, if and when presented by the petitioner for registration, within the frame work of the provisions of the Registration Act, 1908 and the Rules issued thereunder, taking note of the above observations. In the circumstances, there shall be no order as to costs. Consequently, connected WPMP is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

Svn.

To

1.The Sub Registrar,
Reddiarpalayam,
Pondicherry.
2.The District Registrar,
Pondicherry.
3.The District Collector,
Pondicherry.
+ 1 CC to the Senior Government Pleader cum Senior Public Prosecutor for Pondicherry SR NO 53396
+ 1 CC To Mr. PVS Giridhar, Advocate SR NO.53255
+ 1 CC to the Senior Government Pleader cum Senior Public Prosecutor for Pondicherry SR NO 52262

WP No.12577 of 2006
08-11-2006

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